COMMUNITY COUNSEL

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NEWS OF NOTE

In early January, 2003, we will be relocating our offices to another downtown location about one mile from our present offices.

This will necessitate a change in our phone numbers. Our E-mail addresses will remain the same. More details to come....

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

New Condo Rule Amendments on Tap

By the end of November, 2002, an extensive set of administrative rule and form changes prepared by the Division to govern condominiums (and cooperatives) will become effective. Though the draft rules are still subject to a public hearing and possible change, the essential form of the rules seems set. We will briefly summarize some important points, but Associations and managers are encouraged to review them as soon as possible. Please contact us if you are unable to download them from the Division's web site.

Most of the new rules are aimed at the condominium development process, and so do not have a direct impact on existing Associations, though they may be very relevant to anyone buying a newly developed unit. The important areas of concern for ongoing communities are budgets and reserves under Section 61B-22, and Association operations under Section 61B-23.

The changes Legitimize the analysis of professional reserve studies.

With regard to financial matters, the definition of accounting records is expanded to include both payroll and personnel records and all invoices for purchases and for services. The rules also address the pooling of reserved assets by account, i.e. the inclusion of multiple items in a single reserve category. In such cases the formula for calculating full reserve funding must be based either on a separate analysis of the included items or on a "pooled analysis of two or more required assets." This represents a significant change in policy. When using pooled reserve accounts, the traditional reserve disclosures that are required to be contained in the budget have been expanded. As to pooled accounts, the traditional disclosures, such as estimated useful life, estimated remaining life and estimated replacement costs must be given *as to each asset* within the pooled analysis. Of course, the estimated fund balance of the pooled account at the beginning of the budget period must still be given. The funding requirement for pooled accounts must be such that the account balance plus the payments to be made over the remaining estimated useful life of all pooled assets is equal to or greater than projected cash outflows. These changes act to legitimize the analysis long found in professional reserve studies.

The new rules also make it clear that the budget amendment process must follow the same procedure as the original budget adoption process.

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RECENT CASE SUMMARIES

In **DOUG HAMBEL'S PLUMBING, INC., v. MILES V. CONWAY, VERO VENTURES, INC.** et al., 27 Fla. L. Weekly D2368a, (Fla. 4th DCA) October 30, 2002, Subcontractor sued Homeowner to foreclose a construction lien founded on an unwritten arrangement after partially performing plumbing work for which he was not paid. Although the trial court found that a "contract-implied-in-fact" existed, it only entered judgment based on a "contract-implied-in-law," because it found the Subcontractor had not plead the existence of a "contract-implied-in-fact." A "contract-implied-in-law" is a remedy imposed by a court to prevent unjust enrichment under circumstances when no contract has been entered into. It would allow the Subcontractor to recover a money judgment for the value of the benefit he conferred, but would not allow him to foreclose a lien, since a contract did not exist. The District Court of Appeals, reversed, finding that the evidence introduced by the Subcontractor established the existence of a "contract-implied-in-fact" on which the Subcontractor could foreclose a construction lien, and that the count in the Subcontractor's complaint alleged sufficient facts to claim the existence of an actual, unwritten agreement. The Construction Lien Law allows liens on "contracts." Section 713.01(5), Fla. Stat. (1997) defines a "contract" as including agreements which are "….written or unwritten, express or implied." Evidence that the Homeowner had authorized the Subcontractor to enter and perform was sufficient to show an actual contract, thereby establishing the Subcontractor's right to foreclose a lien.

In **IN RE: HILLCREST EAST NO. 25, INC., v. SONDRA ROCK and MARK ROCK**, Arbitration Case No. 02-4980 (8/16/02 Coln, Arb.) the condominium Association adopted a rule, effective October 10, 2000, that prohibited the parking of vehicles other than private passenger vehicles, vans and SUVs with not more than a one-half ton rated cargo capacity. The rule operated to prohibit parking of pickup trucks on the condominium property. Unit owners had previously owned a 1995 Sonoma pickup truck that pre-dated the rule, and purchased a 2002 pickup of the same make after the rule was adopted. The Unit Owner's claim of selective enforcement was rejected by the arbitrator because the SUVs presented by the Unit Owners as evidence of selective enforcement were sufficiently different from the pickup truck at issue and because SUVs were allowed under the rule. The claim of estoppel asserted by the Unit Owners, based on the Association's 1999 approval of the Unit Owner's application to purchase, which referenced their 1995 pickup, was not well founded and did not entitle them to purchase another truck that violated the rule, simply because they had an earlier model of the same truck at a time when no such rule existed.

In **IN RE: LAURA AND JOHN WOOLEY, V. OCEAN INLET YACHT CLUB CONDOMINIUM ASSOCIATION, INC.,** Arbitration Case No. 02-4469 (7/25/02 Scheureman, Arb.) Unit Owners challenged the holding in an earlier arbitration proceeding between the Association and two other Unit Owners. The current petition was on the same subject as the earlier case but the Unit Owners challenge alleged that the earlier decision did not bind them because they were not a party to the earlier case. The Arbitrator ruled that they were bound by the decision because the Association has the authority to take action on behalf of all owners and a contrary holding would require the Association to name every owner in order to bind them. The arbitrator ruled that the Unit Owners could not maintain the arbitration proceeding and entered an order dismissing the petition.

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